



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Shawn A. Williams
Director

May 1, 2013
SPR13/085

Mr. George LeVines
MuckRock News
Dept. MR 2816
P.O. Box 55819
Boston, MA 02205-5819

Dear Mr. LeVines:

I have received your petition appealing the response of the City of Somerville (City) Police Department (Department) to your request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, you requested copies of inventory lists of the Department's law enforcement equipment from the year 2000 to the present. The Department provided an inventory list of the Department's motor vehicles and withheld a list of the Department's firearms inventory pursuant to Exemption (n) of the Public Records Law.

In a March 25, 2013 email message to this office Somerville City Solicitor Francis X. Wright Jr., clarified the Department's response, stating that it intends to withhold the inventory list of firearms pursuant to both Exemptions (b) and (n) of the Public Records Law.

Exemption (b) permits the withholding of records that are:

related solely to internal personnel rules and practices of the government unit, provided however, that such records shall be withheld only to the extent that proper performance of necessary governmental functions requires such withholding

G. L. c. 4, §7 (26)

The City argues that the firearms list is used solely for internal Department purposes and disclosure of this list may prove detrimental to both the Department's necessary governmental function in law enforcement efforts and public safety, as knowledge of the Department's armory could assist someone intent on doing harm.

Exemption (n) applies to:

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records including, but not limited to, blue prints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety

G. L. c. 4, §7 (26)

Exemption (n) allows for the withholding of certain records which if released would undermine public safety. It is the duty of the custodian of records to exercise reasonable judgment to determine whether release of the record is likely to jeopardize public safety.

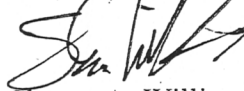
The Department's position is that public safety may be jeopardized by the release of the responsive list. I find that the Department properly withheld the responsive list pursuant to Exemption (n) of the Public Records Law. Accordingly, no review of the Department's Exemption (b) claim is warranted.

In your March 18, 2013 email to this office you raise concerns regarding the Department being unaware of the existence of any other lists of law enforcement equipment that may be responsive to your request. Attorney Wright has assured this office that he is unaware of the existence any other inventory lists of law enforcement equipment.

The duty to comply with requests for information extends only to those records that exist and are in the custody of the custodian of records at the time of the request. See G. L. c. 4, § 7(26). There is no obligation to create a record in response to a request for public records. See G. L. c. 66, § 10(a); 32 Op. Arty Gen. 157, 165 (May 18, 1977). It is the duty of a record custodian to use his superior knowledge of the records to assist a requester in obtaining the records. 950 C.M.R. 32.05(4). Accordingly, I accept Attorney Wright's assertion that there are no other records responsive to your request.

Whereas all responsive records have been provided other than those properly withheld from disclosure, this administrative appeal is now closed.

Very truly yours,



Shawn A. Williams
Supervisor of Records

cc: Francis X. Wright Jr., Esq.